

Regulatory Impact Statement

The proposed Hurunui / Kaikōura Earthquakes Recovery (Rating Valuations Act 1998 – Kaikōura District Council) Order 2017



Agency Disclosure Statement

This regulatory impact statement has been prepared by Land Information New Zealand (**LINZ**) in consultation with the Department of Internal Affairs (**DIA**). It provides an analysis of options to enable the Kaikōura District Council (**Council**) to operate its rating valuation system equitably and efficiently in the circumstances following the Hurunui/Kaikōura earthquakes.

Caveats, uncertainties and limitations of analysis

The RIS has been prepared under urgency since any intervention will need to take effect before the current rating year ends on 30 June 2017. As such, LINZ's ability to test assumptions, quantify the problem, and develop and analyse options was limited.

At the time of writing, LINZ had not yet undertaken public consultation on the proposal to make an Order in Council. However, we have provided a draft RIS to the Council and its valuers, Quotable Value Ltd, for comment. The Council has advised that it supports the proposal.

We are confident that we have identified all of the reasonable options available for addressing the problem.

In assessing the options, we have preferred those that depart from the present valuation system as little as possible, and for as briefly as possible.

The policy options identified in the RIS are not likely to have two of the three effects that the government has said will require a particularly strong case before regulation is considered, namely:

- Imposing additional costs on business; or
- Overriding fundamental common law principles (as summarised in Chapter 3 of the Legislative Advisory Committee Guidelines).

However, the preferred option prevents property owners from obtaining reassessments which reflect the impact of earthquake damage on property values. As a result, the appeal rights which would otherwise apply in respect of those reassessments will not be available. This limit will only apply until 30 June 2019 or the date of the Council's next general revaluation, whichever occurs first.

None of the options require further work to implement the proposed policy decisions.

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10 May 2017

Status quo and problem definition

Existing legislative framework

1. Territorial authorities are required to prepare and maintain district valuation rolls (**DVRs**) under the Rating Valuations Act 1998 (**Valuations Act**)¹.
2. DVRs heavily influence local authority rates. This is because rates must be assessed in accordance with the relevant local authority's 'rating information database'², which is required to include information from the DVR³.
3. Each local authority's entire DVR must be updated every three years through a 'general revaluation'⁴.
4. Between general revaluations, ratepayers are able to request reassessments for any reason⁵.
5. Local authorities are also able to reassess properties on their own initiative⁶. This is known as 'roll maintenance'. The Rating Valuations Rules 2008⁷ provide that roll maintenance can only be undertaken where there has been:
 - (a) an error or omission,
 - (b) a subdivision, amalgamation, or resurvey of the land,
 - (c) a change in the provisions of an operative district plan,
 - (d) an extraordinary event affecting property values,
 - (e) a change in the boundaries of a local authority, and
 - (f) any work affecting the land value⁸.
6. The Hurunui/Kaikōura Earthquakes qualify as an "extraordinary event affecting property values". As such, the Council currently has the discretion to reassess properties that have suffered earthquake damage.
7. Even though roll maintenance is optional, local authorities routinely choose to undertake it. This is because roll maintenance helps grow the rating base (eg. by allowing the local authority to rate new parcels of land created by subdivision), and also improves the accuracy and equity of valuations in the relevant area.
8. Whenever roll maintenance is carried out, the most recent general revaluation is used as a benchmark. The rateable value of a property is intended to reflect what that property would have been worth, in its present state, as at the date of the last general revaluation. This ensures that rates are allocated on an equitable basis (rather than using a different valuation date and market circumstances).

¹ See section 7 of the Valuations Act.

² See section 43 of the Local Government (Rating) Act 2002. The exception is targeted rates.

³ See section 27 of the Local Government (Rating) Act 2002.

⁴ See section 9 of the Valuations Act.

⁵ See section 16 of the Valuations Act.

⁶ See section 14 of the Valuations Act.

⁷ The rules are made under section 5 of the Valuations Act.

⁸ Refer rules 4.2.1 and 4.2.2

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9. If the owner is unhappy with a valuation, or if local authority refuses a request for a valuation, the owner can object by a specified deadline. If the Council is unable to resolve the objection, any affected party may require it to be heard by the Land Valuation Tribunal⁹.

Explanation of the problem

10. As set out above, Council currently has the discretion to revalue any properties in its district which have suffered earthquake damage. In the absence of any legislative intervention, LINZ considers that many property owners will expect it to do so, particularly since other types of roll maintenance have been carried out since the last general revaluation. In other words, it is likely that the Council will come under considerable pressure to carry out this type of roll maintenance.
11. Further, if the Council decides not to undertake new valuations requested by owners, it could be exposed to objections to the Land Valuation Tribunal.
12. The problem with this is that the Council is not currently in a position to carry out roll maintenance for earthquake damaged properties in a robust and thorough way. There are a number of reasons for this, some of which are summarised below.

Reassessments would be unreliable

13. As matters presently stand, any reassessments are unlikely to be accurate or reliable. This is because full information on the extent of damage to individual properties is not yet available.
14. Further, in Christchurch the price paid for many earthquake damaged properties was the market value less the costs to bring the property involved up to an insurable standard (plus a profit and risk allowance). Valuers are not yet in a position to accurately assess those costs, making it difficult (if not impossible) for them to accurately assess the impact of earthquake damage on the value of particular properties.

Problems with physical access

15. In addition, valuers have been unable to physically access some earthquake damaged properties because certain roads in the district are not open. For example, State Highway 1 north of Kaikōura through to Blenheim and Picton is closed, and not expected to reopen until the end of 2017.
16. This is important because the Rating Valuations Rules 2008 require that any actionable valuation changes to the DVR (eg reassessments being carried out pursuant to a request made by the owner) be completed by the end of the financial year (in this case, 30 June 2017)¹⁰. The Council simply cannot reach all of the earthquake damaged properties in its district by that deadline.
17. Of course, the Council could opt to only reassess some properties. However, that would defeat the purpose of roll maintenance, by creating 'winners and losers'.

⁹ See section 32 of the Valuations Act.

¹⁰ This deadline is applied under the Rules to allow reassessed values to be available for rating purposes from the start of the new rating year on 1 July.

High costs of roll maintenance

18. The third issue is that Council has a relatively small rating base, of approximately 3,200 properties.
19. The number of properties that were damaged by the earthquakes is still unclear. However, EQC has advised the Council's valuers that, as of 3 February 2017, 1,842 building claims had been made within the Kaikōura District¹¹. On that basis, it appears that a large proportion of the rateable properties in the district could be eligible for reassessment of their values. As such, the costs of undertaking roll maintenance to reflect earthquake damage would be a significant financial burden for the Council.
20. In addition, any reassessments for earthquake damage are likely to be short-lived. Most of the properties involved will be repaired. Once they are repaired, further reassessment would be required. Devoting scarce resources to reassessing properties that will require a further reassessment once repairs are completed is inefficient. It would hinder a focused and expeditious recovery.

Instability and uncertainty

21. The sheer number of properties that have suffered earthquake damage also means that reassessment would create significant uncertainty for the Council in terms of its rating income.
22. Local authorities depend on rates for much of their revenue. We consider that it is vitally important that the Council has a workable property taxation power at this time.

Summary of the problem

23. In summary, it is not possible for the Council to produce accurate reassessments at this time. In those circumstances, roll maintenance would undermine the credibility of the DVR.
24. In addition, roll maintenance would present a number of practical difficulties, and divert financial resources away from more worthwhile earthquake recovery work.

¹¹ It is understood that this number excludes claims for building contents insurance.

Objective

25. The objective is to ensure that the Council's DVR is credible, and that its financial resources are not diverted away from the earthquake recovery without good reason.
26. There are no non-regulatory options available to achieve the objective set out above (since it cannot be achieved without modifying existing legislation). For that reason, this RIS only considers regulatory options.
27. Further, the only regulatory option we have identified which would enable the problem to be addressed before 30 June 2017 is an Order in Council under the Hurunui/Kaikōura Earthquakes Recovery Act 2016.
28. Section 7 of the Hurunui/Kaikōura Earthquakes Recovery Act 2016 empowers the Governor-General to make Orders in Council to grant exemptions from, modify, or extend any provisions of specified enactments in connection with the whole or a part of the earthquake-affected area.
29. Section 8 provides that Orders in Council must be necessary or desirable for the purpose of the Act, which is to assist the earthquake-affected area and its councils and communities to respond to, and recover from, the impacts of the Hurunui/Kaikōura earthquakes.
30. Section 8 also provides that an Order in Council cannot be broader than is reasonably necessary to address the matters involved.
31. Accordingly, LINZ considers that any Order in Council should depart from the present rating valuation system as little as possible, and as briefly as possible.

Options and impact analysis

Descriptions of the options

Option one (Status Quo)

32. This option involves compliance with the existing legislation as outlined in paragraphs 1 – 9 above.

Option two (Preferred option)

33. Under this option, the proposed Order in Council would limit the circumstances in which the Council could update its DVR under section 14 of the Valuations Act. The Council could make alterations to the DVR under section 14 only as a result of one or more of the following circumstances:
 - There are errors that existed prior to the earthquakes
 - There are omissions from the DVR
 - Rating units are created or abolished, or the boundaries between rating units are adjusted
 - There is a change in the provisions of an operative district plan
 - There is a change in the boundaries of a local authority
 - New work or building takes place

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- There is demolition work (either an individual building or buildings on a rating unit have been totally demolished or a binding total demolition order or notice has been issued)
 - Administrative alterations that are permitted under rule 4.1 of the RVR are needed¹².
34. The main changes from the status quo are that the Council could not undertake roll maintenance in relation to an 'extraordinary event affecting property values', and that any reassessment could not take into account any earthquake damage.
35. Option two also limits the scope of any reassessment carried out at the request of the property owner under section 16 of the Valuations Act. Again, the valuer would be required to disregard earthquake damage in undertaking any reassessment¹³.
36. Importantly, Option two would restrict objection and appeal rights. Owners would not be able to object or appeal a reassessment on the basis that it did not accurately reflect the impact of earthquake damage on property value.

Option three

37. Under this option the definition of 'improvements' in the Valuations Act would be changed as it applies to the Kaikōura District. Improvements would include insurance entitlements under the Earthquake Commission Act 1993 and private insurance contracts. This would have the effect that the impact of any earthquake damage on the value of improvements would be offset by the entitlements. In other words, the impact of earthquake damage on rating values would be neutralised.

Benefits, Impacts and Mitigations of Option One (Status Quo)

38. The impacts of the status quo are discussed above in paragraphs 12 - 24. We have not identified any effective mitigations.
39. It is acknowledged that the status quo would have some benefit in terms of enabling owners to obtain reassessments that reflect earthquake damage. However, LINZ considers that any such benefit is far outweighed by the adverse impacts of retaining the status quo.

Benefits, Impacts and Mitigations of Option Two (Preferred Option)

40. This option allows the Council to only carry out particular types of DVR maintenance. That is, roll maintenance will be limited to changes in property boundaries, new building work and demolitions.
41. The proposal to allow roll maintenance where buildings have been totally demolished or a demolition order has been made is consistent with the approach adopted in the Orders in Council made in relation to the Canterbury Earthquakes. Undertaking reassessments to reflect the impact of demolition is relatively simple to do, since the value of each building will be set out in the relevant valuation records. In many cases site inspections will not be required.

¹² Administrative alterations are changes in the name of the owner or ratepayer or clerical alterations that do not change the values of the rating unit.

¹³ Orders in Councils made in relation to the Canterbury Earthquakes prevented owners from requesting section 16 reassessments altogether. Under the proposed Order in Council owners will still be able to request reassessments, but the scope of any reassessment will be limited.

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42. The main impact of this option is that where properties have been severely damaged but not demolished, rates will still be assessed based on pre-earthquake values. Some people will perceive this as unfair. However, the proposed Order in Council does not prevent the Council from using its own rating policy under section 102 of the Local Government Act 2002 to provide rates relief in appropriate cases. Notably, in March 2017 the Council introduced rating policies to provide rates relief for ratepayers with unoccupiable buildings.
 43. While this option does have undesirable impacts, we have been unable to identify a better alternative.

Waiver of the 28 day rule

44. An important feature of this option is the proposal to waive the '28 day rule'. Standard practice for Orders in Council is that they take effect 28 days after notification in the Gazette. In this case the delay would create difficulties. Unless the order takes effect on 30 June 2017, it would have to be made retrospective. For that reason, it is proposed that any Order in Council to implement this option should take effect on 30 June 2017.

Benefits, Impacts and Mitigations of Option Three

45. This option has both legal and practical difficulties. The present legislation values interests in land and provides for rates to be paid according to the value of those interests. Insurance entitlements are not considered to be interests in land. Instead, they are personal property. It would be inconsistent with the legislation to extend the basis upon which taxes are assessed to assets that do not constitute interests in land.
46. In addition, and at a practical level, applying this option would require the councils to identify insured and uninsured properties and revalue uninsured properties by 30 June 2017. Determining the status of all of the properties in issue by that deadline would be difficult if not impossible.
47. To compound the difficulties, many properties may be underinsured, so that any entitlements will not be adequate to fully offset the impact of earthquake damage.

Similar Orders in Council made under the Canterbury Earthquake Recovery Act 2011

48. A range of Orders in Council were made under the Canterbury Earthquake Recovery Act 2011¹⁴ in order to achieve a similar objective.
49. The substantive differences between the proposed Order in Council and the Canterbury Orders in Council are:
 - The Canterbury Orders in Council prevented owners from requesting reassessments under section 16 of the Valuations Act altogether. By contrast, the proposed Order in Council does not prevent owners from obtaining reassessments. Instead, it only limits the scope of the reassessments, in that they will not be able to reflect earthquake damage.
 - The Canterbury Orders in Council prevented the Council from undertaking roll maintenance where there is a change in the boundaries of a local authority (which it can do under the status quo). The proposed Order in Council does not affect the status quo in that regard.

¹⁴ See for example the Canterbury Earthquake (Rating Valuations Act – Selwyn District Council) Order 2011.

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50. Notably, the Canterbury Orders in Council were effective in achieving very similar objectives to the objectives of the current proposal.

Consultation

51. Land Information New Zealand prepared this Regulatory Impact Statement in consultation with the Department of Internal Affairs.
52. The Council was also provided with a draft of the Regulatory Impact Statement and provided comments on it.

Implementation plan

53. These proposals will be given effect by Order in Council.
54. The main implementation risk is that there are unintended consequences arising from the specification or drafting of the order. This risk will be managed as far as possible by consulting relevant parties.
55. A further risk is that the public will not understand or accept the rationale for the intervention. Land Information New Zealand and the Council will work together to provide clear and consistent messaging to the Council's ratepayers about the reasons for the intervention.
56. Experience from the Canterbury Orders in Council process showed that neither of these risks were significant.
57. No enforcement strategy is needed for the regulations since they remove, rather than impose, requirements.

Monitoring, evaluation and review

58. Data does not need to be gathered to assess the effectiveness of the intervention. As the regulations will be time limited, any review will be limited to determining whether further or prolonged intervention is necessary.

Conclusions and recommendations

59. Of the options discussed, **option two** best meets the Objective set out in and is therefore recommended.